

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

IGNACIO LEMUS,

Plaintiff,

v.

VISALIA POLICE DEPARTMENT, and
DOES 1-3,

Defendants.

Case No. 1:24-cv-00050-JLT-HBK

SCREENING ORDER FINDING
COMPLAINT FAILS TO STATE A CLAIM
AND DIRECTING PLAINTIFF TO FILE AN
AMENDED COMPLAINT, STAND ON
COMPLAINT, OR FILE VOLUNTARY
DISMISSAL¹

(Doc. No. 1)

TWENTY-ONE DAY DEADLINE

This matter is before the Court for screening. *See* 28 U.S.C. § 1915(e)(2). Plaintiff, Ignacio Lemus, is proceeding pro se and *in forma pauperis* in this action under 42 U.S.C. § 1983, alleging various constitutional violations. (Doc. No. 1, “Complaint”). Upon review, the Court finds the Complaint fails to state any claim. The Court affords Plaintiff the option to file an amended complaint or voluntarily dismiss his Complaint before recommending the district court dismiss this action.

SCREENING REQUIREMENT

A plaintiff may bring an action under 42 U.S.C. § 1983 to remedy violations of “rights, privileges, or immunities secured by the Constitution and [federal] laws,” that were perpetrated

¹ This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2022).

by a person or entity, including a municipality, acting under the color of state law. 42 U.S.C. § 1983; *see also Monell v. Dep't of Social Servs.*, 436 U.S. 658, 690-95 (1978). Because Plaintiff is proceeding *in form pauperis*, the Court may dismiss a case “at any time” if the Court determines, *inter alia*, the action fails to state claim or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C § 1915(e)(2)(B)(ii)-(iii). However, a complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim that would entitle him or her to relief. *Johnson v. Knowles*, 113 F.3d 1114, 1117 (9th Cir.), *cert. denied*, 552 U.S. 996 (1997). Dismissal for failure to state a claim in this context is governed by the same standard as dismissal under Federal Rule of Civil Procedure 12(b)(6). *Barren v. Harrington*, 152 F. 3d 1193, 1194 (9th Cir. 1998). As such, a complaint must contain sufficient factual matter to state a claim to relief that is “plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “A complaint is plausible on its face when it contains sufficient facts to support a reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* At this stage, the court accepts the facts stated in the complaint as true. *Hosp. Bldg. Co. v. Rex Hosp. Tr.*, 425 U.S. 738, 740 (1976). The court does not accept as true allegations that are merely conclusory, unreasonable inferences, or unwarranted deductions. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). Nor are legal conclusions considered facts. *Iqbal*, 556 U.S. at 678.

Because Plaintiff is *pro se*, the Court liberally construes the pleading in the light most favorable to the Plaintiff. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969); *Bernhardt v. L.A. County*, 339 F.3d 920, 925 (9th Cir. 2003). If a pleading could be cured by the allegation of other facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc); *Lucas v. Department of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995). However, it is not the role of the court to advise a litigant on how to cure the defects. Such advice “would undermine district judges’ role as impartial decisionmakers.” *Pliler v. Ford*, 542 U.S. 225, 231 (2004); *see also Lopez*, 203 F.3d at 1131 n.13.

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SUMMARY OF THE COMPLAINT

As Defendants, the Complaint names: Visalia Police Department, and Does #1, Doe #2 and Doe #3. (Doc. No. 1 at 2). The Complaint claims federal question jurisdiction based upon alleged violation of Plaintiff's 1st, 4th, 6th and 9th Amendments rights stemming from events that occurred on October 6, 2022. (*Id.* at 3-4). Due to its brevity, the Court recites the facts acts giving rise to Plaintiff claim in full.

Visalia Police Department and said agents alleged drug charges, drug possessions, driving without a license, all allegations were fraud with no evidence to support. Made arrest without Miranda rights and called CPS to gain custody of my daughter with fraudulent accusations. Officers fails to show for trial admitting to my attorney on record that they would not be present do to the wrongs they had committed.

(*Id.* at 5, unedited text except original text in capitalization). As relief, Plaintiff seeks \$1,000,000,000 for "mental and emotional harm and duress. Wrongful Arrest. Character Defamation. Deprivation of Property. Loss of Daughter's Custody. Loss of Wages. Trauma." (*Id.*).

APPLICABLE LAW AND ANALYSIS

Liberal construed, the Complaint attempts to allege various claims stemming from Plaintiff's false arrest on or about October 6, 2022.

No Causal Connection as to Doe Defendants

The Complaint sues Does 1-3. "As a general rule, the use of 'John Doe' to identify a defendant is not favored." *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980) (citation omitted). While "situations may arise where the identity of alleged defendants cannot be known prior to the filing of a complaint," *Id.*, a plaintiff must plead sufficient factual detail to allow the court to reasonably infer that each defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 678. Here, Plaintiff fails to do so.

To state a claim under 42 U.S.C. § 1983 a plaintiff must allege: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Park v. City & County of Honolulu*, 952 F.3d 1136, 1140 (9th Cir. 2020). Section

1 1983 requires a connection or link between a defendant's actions and the plaintiff's alleged
2 deprivation. *Harper v. City of Los Angeles*, 533 F.3d 1010, 1026 (9th Cir. 2008). "A person
3 subjects another to the deprivation of a constitutional right, within the meaning of section 1983, if
4 he does an affirmative act, participates in another's affirmative acts, or omits to perform an act
5 which he is legally required to do that causes the deprivation of which complaint is made."
6 *Lacey v. Maricopa County*, 693 F.3d 896, 915 (9th Cir. 2012). Here, the Complaint is devoid of
7 any factual allegations explaining how any of the Doe Defendant caused the deprivation of
8 Plaintiff's constitutional rights other than implying that his arrest was false. If Plaintiff chooses
9 to file an amended complaint, he must provide sufficient facts to discern what each Doe
10 Defendant did or failed to do and sufficient facts to identify each Doe Defendant.

11 **No Facts to Support False Arrest Claim**

12 The Fourth Amendment to the United States Constitution confers the right to protection
13 from arrest without probable cause. *Beck v. Ohio*, 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142
14 (1964). To state a claim for false arrest under § 1983, a plaintiff must show that he was arrested
15 without probable cause or other justification. *Dubner v. City and County of San Francisco*, 266
16 F.3d 959, 964-65 (9th Cir. 2001). Probable cause exists if, at the time of the arrest, under the
17 totality of the circumstances known to the arresting officers (or within the knowledge of the other
18 officers at the scene), a prudent person would believe the suspect had committed a
19 crime. *Blankenhorn v. City of Orange*, 485 F.3d 463, 471-72 (9th Cir. 2007)). Plaintiff's
20 statements that the none of the officers appeared for court because of "the wrongs they had
21 committed" is too vague for this Court to infer that officers did not have probable cause to arrest
22 Plaintiff at an earlier point in time. If Plaintiff chooses to file an amended complaint, he must
23 provide sufficient facts that gives rise to a plausible claim that given the totality of the
24 circumstances known to each named defendant at that time to infer they acted unreasonably in
25 arresting him.

26 **No Miranda Claim Available**

27 The Complaint makes a passing reference to *Miranda* in its statement of facts. A cause of
28 action alleging a Fifth Amendment violation predicated upon officer's failure to question a person

1 in custody without first providing *Miranda* warnings,² is not a cognizable action under § 1983.
 2 *Chavez v. Martinez*, 538 U.S. 760, 772-73 (2003) (Justice Thomas, joined by the Chief Justice
 3 and Justices O'Connor and Scalia) (“Chavez’s failure to read *Miranda* warnings to Martinez did
 4 not violate Martinez’s constitutional rights and cannot be grounds for a § 1983 action”); *Id.* at 789
 5 (Justice Kennedy, joined by Justice Stevens) (“[F]ailure to give a *Miranda* warning does not,
 6 without more, establish a completed violation when the unwarned interrogation ensues.”). Thus,
 7 Plaintiff cannot advance a § 1983 claim based on an alleged *Miranda* violation.

8 **Interference With Child Custody**

9 “Parents and children have a well-elaborated constitutional right to live together without
 10 governmental interference.... That right is an essential liberty interest protected by the Fourteenth
 11 Amendment’s guarantee that parents and children will not be separated by the state without due
 12 process of law except in an emergency.” *Wallis v. Spencer*, 202 F.3d 1126, 1136 (9th Cir. 2000).
 13 While a parent has a “fundamental liberty interest” in companionship with his or her child, for the
 14 government’s removal of a child “[t]o amount to a violation of substantive due process, ... the
 15 harmful conduct must ‘shock [] the conscience’ or ‘offend the community’s sense of fair play and
 16 decency.’ ” *Rosenbaum v. Washoe Cnty.*, 663 F.3d 1071, 1079 (9th Cir. 2011) (quoting *Rochin v.*
 17 *California*, 342 U.S. 165, 172–73 (1952)). Th Complaint falls far short of providing facts to
 18 support this showing.

19 **No Showing of Custom or Policy**

20 Plaintiff names Visalia Police Department as a defendant. Municipalities and police
 21 departments “may be liable under § 1983 for constitutional injuries pursuant to (1) an official
 22 policy; (2) a pervasive practice or custom; (3) a failure to train, supervise, or discipline; or (4) a
 23 decision or act by a final policymaker.” *Jessen v. Cnty. of Fresno*, 808 F. App’x 432, 434–35 (9th
 24 Cir. 2020) (citing *Horton by Horton v. City of Santa Maria*, 915 F.3d 592, 602–03 (9th Cir. 2019)
 25 (citing *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978))).
 26 The Complaint here contains no such allegations to state a claim against the Visalia Police
 27

28 ² *Miranda v. Arizona*, 384 U.S. 436 (1966).

Department.

Defamation Claim Barred Under State Law

Under California law, the elements of defamation are: (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage. *Price v. Operating Engineers Local Union No. 3*, 195 Cal. App. 4th 962, 970 (2011). Plaintiff's state claim for defamation is barred by California Government Code section 821.6, which provides immunity to a public employee "for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause." Cal. Gov't Code § 821.6; *see Amylou R. v. Cty. of Riverside*, 28 Cal. App. 4th 1205, 1210 (1994). Thus, Plaintiff cannot recover for his state law defamation claim.

OPTIONS

To continue the prosecution of this action, Plaintiff must take one of the following three options within twenty-one days from the date of this Order. **First Option:** Because the Court cannot determine that the filing of an amended complaint cannot cure the deficiencies identified above, the Court will afford Plaintiff an opportunity to file an amended complaint if he chooses. An amended complaint supersedes (replaces) the original complaint and, thus, the amended complaint must be free-standing and complete. *See Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989). Plaintiff should use the Court's approved Non-Prisoner Civil Rights Complaint Form to file his amended complaint and he must title it "First Amended Complaint." For each cause of action and each defendant, Plaintiff must allege facts sufficient to show that the defendant violated his civil rights. ***Plaintiff may not amend the complaint to add unrelated claims.*** **Second Option:** Plaintiff may file a Notice stating he intends to stand on his current Complaint subject to the undersigned recommending the district court dismiss for the reasons stated in this Order. **Third Option:** Because no defendant has yet been served, Plaintiff may file a Notice of Voluntarily Dismissal without prejudice under Federal Rule of Civil Procedure 41(a)(1).

Alternatively, if Plaintiff fails to timely respond to this Court Order, *i.e.* fails to perform

any of the three options, the undersigned will instead recommend that the district court dismiss this case as a sanction for Plaintiff's failure to comply with a court order and for failing to prosecute this action after its determination that the complaint failed to state a claim. *See* Local Rule 110; Fed. R. Civ. P. 41(b).

Accordingly, it is **ORDERED**:

1. Within **twenty-one (21) days** from the date of service of this order, Plaintiff shall take one of the following actions: (a) file a First Amended Complaint; (b); file a Notice that he intends to stand on the Complaint as screened subject to the undersigned recommending the district court dismiss for the reasons stated in this Order; (c) file a Notice to voluntarily dismiss this action without prejudice under Fed. R. Civ. P. 41.

2. If Plaintiff fails to timely comply with this Court Order or seek an extension of time to comply, the Court will recommend the district court dismiss this action for Plaintiff's failure to comply with this Court Order and prosecute this action.

3. The Clerk of Court shall include a blank non-prisoner civil rights complaint form for Plaintiff's use as appropriate.

Dated: February 27, 2024


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE